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C O N F I D E N T I A L SECTION 01 OF 02 VILNIUS 001008

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E.O. 12958: DECL: 11/08/2016  
TAGS: [ENRG](#) [EPET](#) [PREL](#) [LH](#) [RS](#) [PL](#)  
SUBJECT: EU DECISION HELPS REFINERY DEAL BUT SIGNIFICANT  
OBSTACLES REMAIN

REF: VILNIUS 962 AND PREVIOUS

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Classified By: POL/ECON Section Chief Rebecca Dunham for reasons 1.4 (b)  
) and (d)

¶1. (C) Summary: Poland's PKN Orlen has overcome the main legal obstacle hindering its purchase of Lithuania's Mazeikiu Nafta oil refinery (MN) -- approval of the EU's competition authority -- but other hurdles remain. The investigation into the October 12 fire will not conclude before February 1, and it is unlikely that the deal will close before then. This time lag creates additional opportunities for other problems to arise and still potentially spoil the deal. The banks financing the deal are reportedly increasingly nervous about their support for this transaction -- support which is critical for the purchase. Problems in MN's boardroom appear manageable, but do not help the situation. End Summary.

Good news . . .  
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¶2. (C) Emboff was in the room when MN's leadership heard the news that the European Commission's competition authority (DG-COMP) had approved on November 7 the sale of MN to PKN. One of MN's lawyers read the details of the decision, whooped with joy, and exclaimed: "this is exactly what we wanted!" The others present expressed similar sentiment, with lots of mutual back-slapping and congratulatory handshakes.

. . . But it's not over yet  
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¶3. (C) The GOL has announced that its investigation into the October 12 fire will not conclude before February 1. PM adviser Saulius Specius told us November 7 that the experts charged with examining and analyzing the physical evidence would complete their work only in late December, delaying the GOL's investigation into the fire.

¶3. (C) PKN announced on November 8 that it expects to close the deal "no later than February 28," but reiterated the company's desire to complete the takeover "as soon as possible," possibly by the end of the year. Specius told us that PKN, MN's majority shareholder Yukos International (a

Dutch-registered company), and the GOL would all like to close the deal by the end of the year, but admitted that the delay in the GOL's fire investigation made this timeframe unlikely. He also said that PKN was having some problems with the three-bank consortium that had agreed to finance the purchase. One member of the consortium -- Deutsche Bank -- had already pulled out of the deal, he said, but the other two have agreed to cover the full amount of the loan. He said he was unsure how the banks would react if the refinery experienced any more "accidents" prior to closing.

Boardroom antics an irritant, not a deal-stopper  
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14. (C) MN's Amcit General Director, Nelson English, told us on November 6 that an attempt to fire him at a November 5 MN board meeting failed when one of the board members, due to participate by telephone from Latvia, did not answer his phone. English said that the board's chair (one of the three GOL-appointed board members) then refused to call for a vote on the motion to fire English -- a motion initiated by the four Yukos-appointed members of the board, including the one who didn't answer the phone. English said that he would have preferred that the chair call for the vote, which would have resulted in the three GOL-appointees voting against the motion and the three Yukos appointees voting in favor, effectively rejecting the motion. Instead, however, the chair postponed the vote until the next board meeting, slated to take place November 9 at 1800 hrs local. English said that he hoped that the GOL would instruct its appointees to avoid the meeting, preventing the quorum necessary to have the vote.

15. (C) Specius told us November 9 that the GOL had indeed instructed its appointees to stay away from the meeting. He also said that even if the management board voted to fire English, the supervisory board was unlikely to confirm this

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decision, which would also spare English's job.

16. (C) English received public votes of support from both the PM and Minister of Economy this week. Foreign Minister Vaitiekunas told the Ambassador November 9 that he also advocated strongly at a cabinet meeting in favor of keeping English at the helm of MN.

17. (C) English, Specius, and Yukos executives have told us that the Yukos-appointed board members are "out of control." Yukos International has announced a shareholders' meeting on December 4 or 14. Both English and Specius said that the main purpose of the meeting will be to appoint new directors to MN's management board.

Another problem on the horizon?  
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18. (C) Specius said that a new problem with the PKN purchase had just surfaced involving a power plant adjacent to the refinery. MN purchased the plant last year and operates it as a subsidiary. Unfortunately, said Specius, the plant runs on heavy fuel oil produced by the refinery, resulting in emissions that violate environmental standards. To bring the plant into compliance, MN devised a corporate restructuring plan that would make the plant an integral part of the refinery. Calculated as a single corporate unit, the refinery/power plant's emissions would not exceed allowed polluting limits. MN's board has approved this plan, which shareholders need to approve at the next meeting.

19. (C) The problem, Specius said, is that PKN opposes this restructuring plan because it will increase the number of MN shares. PKN's lawyers believe that this will give Eduard Rebgun, the bankruptcy trustee appointed by a Russian bankruptcy court to administer the assets still held by Russia-based Yukos Oil, legal grounds to re-open the Chapter

15 bankruptcy case Rebgun filed in New York in April. (That case resulted in a temporary restraining order preventing Yukos International executives from signing any deal involving the transfer of MN shares. The judge lifted the restraining order on May 25.) Specius said that he needed to learn more about the potential problems associated with this restructuring plan, but emphasized that the GOL had made a mistake in approving it.

Comment

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¶10. (C) The EU's approval of PKN's purchase of MN was a rare bit of unambiguous good news for the refinery in recent weeks, and the GOL's apparent rallying around English is also helpful in bringing the deal to closure. Unfortunately, this deal is still far from complete. Every additional delay and problem contribute to the complexity of this deal and hinder its closure, and the fact that the deal is unlikely to close until February gives plenty of opportunities for additional problems to arise.

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